IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1747 OF 1988
To
FIRST APPEAL NO. 1749 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
GAJRIBEN MANGAL MACHHI & ORS. - Respondent(s)

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Appearance :
Dr. Amee Yajnik for Appellant(s).
Shri Amrish Pandya for Respondent(s) : 1- 9.
None for Respondent(s) : 10-14.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/07/2007

COMMON ORAL JUDGMENT

The appellant-United India Assurance Company Limited, being aggrieved by the award dated 29th February, 1988 made in M.A.C.P. Nos.276 of 1984, 277 of 1984 and 278 of 1984 by the learned Member, Motor Accident Claims Tribunal, Valsad at Navsari is before this Court in First Appeal Nos.1747, 1748 and 1749 of 1988.

2. Dr. Amee Yajnik, learned Counsel for the appellant, submitted that the learned Court below was unjustified in holding that the driver of the rickshaw, which was insured with the appellant-Company, was rash and negligent and was the author of the accident. According to her, if the truck driver had made an admission that he had seen the rickshaw coming from the opposite side, then, the driver should have acted safe and was required to stop the vehicle, giving way to the rickshaw to cross the bridge. She also submitted that the amounts awarded in favour of the claimants suffer with the vice of excessiveness and deserves to be reduced.

3. On the other hand, Shri Amrish Pandya, learned Counsel for the respondents-claimants, submitted that the admission made by the driver is to be read in full, when he says that he was on a single road bridge, he had already crossed 70% of the bridge length and then, suddenly, the rickshaw entered in the bridge and dashed against the

truck. He submits that the rickshaw driver, after seeing the oncoming truck, should have stopped. His further submission is that the learned Court below did not err in awarding a sum of Rs.74,500/- in favour of Gajriben Dubalbhai Machhi & others. He also submits that in other two cases, the learned Court below has awarded a sum of Rs.9,999/- to the claimants of M.A.C.P. Nos.277 and 278 of 1984.

4. From the evidence available on the records, it would clearly appear that the truck driver had already entered upon the bridge and thereafter, had crossed more than 50% of the length of the bridge. It is at that point of time that the rickshaw entered upon the bridge and dashed against the truck on the single road, especially, the bridge. When a vehicle is oncoming from the other side, then, the person, who is going from the other side, always has to see that whether the other vehicle coming from the other side would enter the bridge first and if yes, then, the vehicle on the other side should always stop and give way. It goes with further strength that in case a truck is coming on a single road bridge, then, the vehicle coming from the other side should always stop. The argument raised by the learned Counsel for the appellant would not hold water that the driver of the truck was rash and negligent when the evidence proves it otherwise.

5. In case of death of Dubalbhai, it was found by the learned

Court below that he was aged about 40 years and was earning Rs.700/- to Rs.800/- per month. The learned Court below has found that he was supporting the family by Rs.450/- per month. I do not think that the learned Court below erred in holding that the family dependency could be Rs.60,800/-.

6. So far as the case of Shantilal in M.A.C.P. No.277 of 1984 is concerned, the claimant had suffered a fracture in the leg. The learned Court below has found that he remained in plaster for three months, he was bedridden and had to spent a sum of Rs.4,000/-. The learned Court had awarded a sum of Rs.5,000/- towards pain, shock and suffering and a sum of Rs.4,000/- for loss of income. The learned Court observed that he would be entitled to Rs.12,000/-, but, according to his claim, his entitlement would be Rs.9,999/-. In the opinion of this Court, the learned Court below was not unjustified in making the said award.

7. In the case of Kashinath in M.A.C.P. No.278 of 1984, the insured was a boy of 7 to 8 years, the boy was confined to bed for three and half months and the family was required to spent a sum of Rs.5,000/- towards medical expenses. The learned Court below rightly awarded a sum of Rs.5,000/- towards medical expenses and Rs.5,000/- towards pain, shock and suffering.

After going through the evidence, I am unable to hold that the learned Court below was unjustified in awarding a sum of Rs.9,999/- to the minor – Kashinath, who had suffered a fracture in the right fimur and remained bedridden for a period of three and half months.

8. Even on the question of quantum, in each of the cases I do not find any reason to interfere. Each of the appeals is dismissed. No costs.

[R.S.Garg, J.]

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